

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9

10 **Crafty Productions, Inc.**, a California
11 corporation, and **Crafty Productions,**
12 **LLC**, a California company,

13 Plaintiffs,

14 v.

15 **Fuqing Sanxing Crafts Co. Ltd.**, a
16 China company, **Tony Zhu**, an
17 individual, **Michelle Faherty d/b/a**
18 **MRF Associates**, an individual, **The**
19 **Michaels Companies, Inc.**, a Delaware
20 corporation, **Michaels Stores, Inc.**, a
21 Delaware corporation, **Plaid**
22 **Enterprises, Inc.**, a Georgia
23 corporation, **Hobby Lobby Stores,**
24 **Inc.**, an Oklahoma corporation, **Sbars,**
25 **Inc.**, a New Jersey corporation, **A.C.**
26 **Moore Arts & Crafts, Inc.**, a New
27 Jersey corporation, **99 Cents Only**
28 **Stores LLC**, a California company,
Dollar Tree Stores, Inc., a Virginia
corporation, **Jo-Ann Stores, LLC**, an
Ohio company, **Party City Holdings,**
Inc., a Delaware corporation, **Party**
City Corporation, a Delaware
corporation, **ZheJiang HongYe Co.**
Ltd., a China company, **Fuzhou Bomy**
Trading Co., Ltd., a China company,
Fuzhou Great Suns Co. Ltd., a China
company, **Sunface Crafts Co. Ltd.**, a
China company,

Defendants.

Case No. 3:15-cv-00719-BAS-JLB

**ORDER GRANTING JOINT
MOTION AND ENTERING
STIPULATED PROTECTIVE
ORDER**

[ECF No. 141]

1 drawings; notes (including laboratory notebooks and records); reports; instructions;
 2 disclosures; other writings; models and prototypes and other physical objects.

3 3. The term “counsel” will mean outside counsel of record, and up to one
 4 (1) in-house counsel, including paralegals, secretaries, and other support staff.

5 GENERAL RULES

6 4. Each party to this litigation that produces or discloses any materials,
 7 answers to interrogatories, responses to requests for admission, trial testimony,
 8 deposition testimony, and transcripts of trial testimony and depositions, or
 9 information that the producing party believes should be subject to this Protective
 10 Order may designate the same as “CONFIDENTIAL” or “CONFIDENTIAL—FOR
 11 COUNSEL ONLY,” as follows: (a) any party may designate information as
 12 “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel,
 13 the unrestricted disclosure of such information could be potentially prejudicial to the
 14 business or operations of such party; and (b) any party may designate information as
 15 “CONFIDENTIAL—FOR COUNSEL ONLY” only if, in the good faith belief of
 16 such party and its counsel, the information is among that considered to be most
 17 sensitive by the party, including but not limited to trade secret or other confidential
 18 research, development, financial or other commercial information.

19 5. In the event the producing party elects to produce materials for
 20 inspection, no marking need be made by the producing party in advance of the
 21 initial inspection. For purposes of the initial inspection, all materials produced will
 22 be considered as “CONFIDENTIAL—FOR COUNSEL ONLY,” and must be
 23 treated as such pursuant to the terms of this Order. Thereafter, upon selection of
 24 specified materials for copying by the inspecting party, the producing party must,
 25 within a reasonable time prior to producing those materials to the inspecting party,
 26 mark the copies of those materials that contain Confidential Information with the
 27 appropriate confidentiality marking.

28

1 6. Whenever a deposition taken on behalf of any party involves a
2 disclosure of Confidential Information of any party: (a) the deposition or portions of
3 the deposition must be designated as containing Confidential Information subject to
4 the provisions of this Order, such designation must be made on the record whenever
5 possible (but a party may designate portions of depositions as containing
6 Confidential Information after transcription of the proceedings), and a party will
7 have until fourteen (14) days after receipt of the deposition transcript to inform the
8 other party or parties to the action of the portions of the transcript to be designated
9 “CONFIDENTIAL” or “CONFIDENTIAL—FOR COUNSEL ONLY;” (b) the
10 disclosing party will have the right to exclude from attendance at the deposition,
11 during such time as the Confidential Information is to be disclosed, any person other
12 than the deponent, counsel (including their staff and associates), the court reporter,
13 and the person(s) agreed upon pursuant to Paragraph 8 below; and (c) the originals
14 of the deposition transcripts and all copies of the deposition must bear the legend
15 “CONFIDENTIAL” or “CONFIDENTIAL—FOR COUNSEL ONLY,” as
16 appropriate, and the original or any copy ultimately presented to a court for filing
17 must not be filed unless it can be accomplished under seal, identified as being
18 subject to this Order, and protected from being opened except by order of this Court.

19 7. All Confidential Information designated as “CONFIDENTIAL” or
20 “CONFIDENTIAL—FOR COUNSEL ONLY” must not be disclosed by the
21 receiving party to anyone other than those persons designated within this order and
22 must be handled in the manner set forth below and, in any event, must not be used
23 for any purpose other than in connection with this litigation, unless and until such
24 designation is removed either by agreement of the parties, or by order of the Court.

25 8. Information designated “CONFIDENTIAL—FOR COUNSEL ONLY”
26 may be viewed only by counsel (as defined in Paragraph 3) of the receiving party,
27
28

1 and by independent experts under the conditions set forth in this paragraph.¹ The
 2 right of any independent expert to receive any Confidential Information will be
 3 subject to the advance approval of such expert by the producing party or by
 4 permission of the Court. The party seeking approval of an independent expert must
 5 provide the producing party with the name and curriculum vitae of the proposed
 6 independent expert, and an executed copy of the form attached hereto as Exhibit A,
 7 in advance of providing any Confidential Information of the producing party to the
 8 expert. Any objection by the producing party to an independent expert receiving
 9 Confidential Information must be made in writing within fourteen (14) days
 10 following receipt of the identification of the proposed expert. Confidential
 11 Information may be disclosed to an independent expert if the fourteen (14) day
 12 period has passed and no objection has been made. The approval of independent
 13 experts must not be unreasonably withheld.

14 9. Information designated “CONFIDENTIAL” may be viewed only by
 15 counsel (as defined in Paragraph 3) of the receiving party, by independent experts
 16 (pursuant to the terms of Paragraph 8), and by the additional individuals listed as
 17 follows, provided each such individual has read this Order in advance of disclosure
 18 and has agreed in writing to be bound by its terms: (a) executives who are required
 19 to participate in policy decisions with reference to this action; (b) technical
 20 personnel of the parties with whom counsel for the parties find it necessary to
 21 consult, in the discretion of such counsel, in preparation for trial of this action; and
 22 (c) stenographic and clerical employees associated with the individuals identified
 23 above.

24 10. With respect to material designated “CONFIDENTIAL” or
 25 “CONFIDENTIAL—FOR COUNSEL ONLY,” any person indicated on the face of
 26 _____

27 ¹ However, no Defendant shall, in response to any discovery request propounded by
 28 Plaintiffs, be required to produce responsive financial, customer, or business-related
 information to any other Defendant.

1 the document to be its originator, author or a recipient of a copy of the document,
2 may be shown the same.

3 11. All information which has been designated as “CONFIDENTIAL” or
4 “CONFIDENTIAL—FOR COUNSEL ONLY” by the producing or disclosing
5 party, and any and all reproductions of that information, must be retained in the
6 custody of the counsel for the receiving party identified in Paragraph 3, except that
7 independent experts authorized to view such information under the terms of this
8 Order may retain custody of copies such as are necessary for their participation in
9 this litigation.

10 12. Before any materials produced in discovery, answers to interrogatories,
11 responses to requests for admissions, deposition transcripts, or other documents
12 which are designated as Confidential Information are filed with the Court for any
13 purpose, the party seeking to file such material must seek permission of the Court to
14 file the material under seal.

15 13. No document shall be filed under seal unless counsel secures a court
16 order allowing the filing of a document under seal. An application to file a
17 document under seal shall be served on opposing counsel, and on the person or
18 entity that has custody and control of the document, if different from opposing
19 counsel. If the application to file under seal a document designated as confidential
20 is being made by the non-designating party, then, upon request, the designating
21 party must promptly provide the applicant with a legal basis for the confidential
22 designation to include within the application. If opposing counsel, or the person or
23 entity that has custody and control of the document, wishes to oppose the
24 application, he/she must contact the chambers of the judge who will rule on the
25 application, to notify the judge’s staff that an opposition to the application will be
26 filed. If an application to file a document under seal is granted, a redacted version
27 of the document shall be e-filed, and a courtesy copy of the unredacted document
28 shall be delivered to chambers.

1 14. At any stage of these proceedings, any party may object to a
2 designation of the materials as Confidential Information. The party objecting to
3 confidentiality must notify, in writing, counsel for the designating party of the
4 objected-to materials and the grounds for the objection. If the dispute is not
5 resolved consensually between the parties within seven (7) days of receipt of such a
6 notice of objections, the objecting party may move the Court for a ruling on the
7 objection. The materials at issue must be treated as Confidential Information, as
8 designated by the designating party, until the Court has ruled on the objection or the
9 matter has been otherwise resolved.

10 15. All Confidential Information must be held in confidence by those
11 inspecting or receiving it, and must be used only for purposes of this action.
12 Counsel for each party, and each person receiving Confidential Information must
13 take reasonable precautions to prevent the unauthorized or inadvertent disclosure of
14 such information. If Confidential Information is disclosed to any person other than
15 a person authorized by this Order, the party responsible for the unauthorized
16 disclosure must immediately bring all pertinent facts relating to the unauthorized
17 disclosure to the attention of the other parties and, without prejudice to any rights
18 and remedies of the other parties, make every effort to prevent further disclosure by
19 the party and by the person(s) receiving the unauthorized disclosure.

20 16. No party will be responsible to another party for disclosure of
21 Confidential Information under this Order if the information in question is not
22 labeled or otherwise identified as such in accordance with this Order.

23 17. If a party, through inadvertence, produces any Confidential Information
24 without labeling or marking or otherwise designating it as such in accordance with
25 this Order, the designating party may give written notice to the receiving party that
26 the document or thing produced is deemed Confidential Information, and that the
27 document or thing produced should be treated as such in accordance with that
28 designation under this Order. The receiving party must treat the materials as

1 confidential, once the designating party so notifies the receiving party. If the
2 receiving party had disclosed the materials before receiving the designation, the
3 receiving party must notify the designating party in writing of each such disclosure.
4 Counsel for the parties will agree on a mutually acceptable manner of labeling or
5 marking the inadvertently produced materials as “CONFIDENTIAL” or
6 “CONFIDENTIAL—FOR COUNSEL ONLY.”

7 18. Nothing in this Order will prejudice the right of any party to object to
8 the production of any discovery material on the grounds that the material is
9 protected as privileged or as attorney work product.

10 19. Nothing in this Order will bar counsel from rendering advice to their
11 clients with respect to this litigation and, in the course thereof, relying upon any
12 information designated as Confidential Information, provided that the contents of
13 the information must not be disclosed.

14 20. This Order will be without prejudice to the right of any party to oppose
15 production of any information for lack of relevance or any other ground other than
16 the mere presence of Confidential Information. The existence of this Order must not
17 be used by either party as a basis for discovery that is otherwise improper under the
18 Federal Rules of Civil Procedure.

19 21. Nothing in this Order will be construed to prevent disclosure of
20 Confidential Information if such disclosure is required by law or by order of the
21 Court.

22 22. Upon final termination of this action, including any and all appeals,
23 counsel for each party must, upon request of the producing party, return all
24 Confidential Information to the party that produced the information, including any
25 copies, excerpts, and summaries of that information, or must destroy same at the
26 option of the receiving party, and must purge all such information from all machine-
27 readable media on which it resides. Notwithstanding the foregoing, counsel for each
28 party may retain all pleadings, briefs, memoranda, motions, and other documents

1 filed with the Court that refer to or incorporate Confidential Information, and will
2 continue to be bound by this Order with respect to all such retained information.
3 Further, attorney work product materials that contain Confidential Information need
4 not be destroyed, but, if they are not destroyed, the person in possession of the
5 attorney work product will continue to be bound by this Order with respect to all
6 such retained information. Within 90 days after the case is closed, the Court shall
7 destroy all Confidential Information (including any sealed documents). Any action
8 by the Court must be preceded by an *ex parte* motion for an order authorizing the
9 destruction of all Confidential Information.

10 23. The restrictions and obligations set forth within this Order will not
11 apply to any information that: (a) the parties agree should not be designated
12 Confidential Information; (b) the parties agree, or the Court rules, is already public
13 knowledge; (c) the parties agree, or the Court rules, has become public knowledge
14 other than as a result of disclosure by the receiving party, its employees, or its
15 agents in violation of this Order; or (d) has come or will come into the receiving
16 party's legitimate knowledge independently of the production by the designating
17 party. Prior knowledge must be established by pre-production documentation.

18 24. The restrictions and obligations within this Order will not be deemed to
19 prohibit discussions of any Confidential Information with anyone if that person
20 already has or obtains legitimate possession of that information.

21 25. Transmission by e-mail is acceptable for all notification purposes
22 within this Order.

23 26. Without a separate court order, neither this Order nor a stipulation of
24 the parties may change, amend, or circumvent any court rule or local rule.

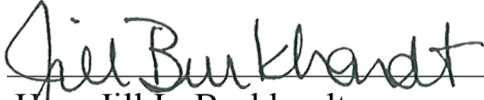
25 27. This Order may be modified by agreement of the parties, subject to
26 approval by the Court.

27 28. The Court may modify the terms and conditions of this Order for good
28 cause, or in the interest of justice, or on its own order at any time in these

1 proceedings. The parties prefer that the Court provide them with notice of the
2 Court's intent to modify the Order and the content of those modifications, prior to
3 entry of such an order.

4 IT IS SO ORDERED.

5 Dated: November 17, 2015


Hon. Jill L. Burkhardt
United States Magistrate Judge

Stipulation of Counsel

Presented and agreed to by all counsel.

Respectfully submitted,

Dated: November 17, 2015

ONE LLP

By: /s/ Stephen M. Lobbin
Attorneys for Plaintiff **Crafty Productions, Inc.**
and **Crafty Productions, LLC**

Dated: November 17, 2015

LAW OFFICES OF TONY T. LIU

By: /s/ Tony T. Liu
Attorneys for Defendants **Fuqing Sanxing**
Crafts Co., Ltd. and **Tony Zhu**

Dated: November 17, 2015

REED & GIORDANO, P.A.

By: /s/ Phillip M. Giordano
Attorneys for Defendants **Michelle Faherty**
d/b/a MRF Associates

Dated: November 17, 2015

DYKEMA GOSSETT LLP

By: /s/ Allan Gabriel
Attorneys for Defendants **The Michaels**
Companies, Inc. and **Michaels Stores, Inc.**

Dated: November 17, 2015

BRIGGS LAW OFFICE

By: /s/ Jeffrey C. Briggs
Attorney for Defendant **Plaid Enterprises, Inc.**

Dated: November 17, 2015

DAVIS WRIGHT TREMAINE LLP

By: /s/ Warren J. Rheume
Attorneys for Defendant **Hobby Lobby, Inc.**

Dated: November 17, 2015

RATNER PRESTIA

By: /s/ Benjamin E. Leace
Attorneys for Defendants **Sbars, Inc.** and
A.C. Moore Arts & Crafts, Inc.

Dated: November 17, 2015

MANDOUR & ASSOCIATES, APC

By: /s/ Ben T. Lila
Attorneys for Defendants **Party City Holdings,**
Inc. and **Party City Corporation**

Exhibit A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, declare and say that:

1. I am employed as _____ (Title)
by _____ (Company).

2. I have read the Stipulated Protective Order entered in *Crafty Productions, Inc. et al. v. Fuqing Sanxing Crafts Co. Ltd. et al.*, Case No. 3:15-cv-00719-BAS-JLB, and I have received a copy of the Protective Order.

3. I promise that I will use any and all “Confidential” or “Confidential—For Counsel Only” information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such “Confidential” or “Confidential—For Counsel Only” information with anyone other than the persons described in Paragraphs 3, 8 and 9 of the Protective Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the Southern District of California with respect to enforcement of the Protective Order.

6. I understand that any disclosure or use of “Confidential” or “Confidential—For Counsel Only” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____